LOS ANGELES BAR BULLETIN

In This Issue

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LOS ANGELES
BAR BULLETIN

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A WORD FROM THE PRESIDENT

ONE of the functions of a local bar association is to protect the layman against the evils, and the profession against the encroachments of the unauthorized practice of law. The programs of our Association are based upon the belief that the ultimate prevention of unauthorized practice is to be accomplished not so much by legislation and prosecution against the unlawful practitioner as by a removal of the causes which lead the potential client to patronize the unlawful practitioner instead of the lawyer. The principal causes as I see it are (1) a lack of knowledge that a lawyer's services are needed, (2) a feeling that a lawyer's services are too expensive or too uncertain in cost, (3) a lack of acquaintance with a lawyer, and (4) a lack of interest by lawyers in seeking and taking care of small business.

The lack of knowledge that a lawyer's services are needed can be cured only by continuing education. The Association for several months has engaged in a new experiment of direct education by conducting a radio program over Station KGFJ (1230) at 5:40 P. M. on Tuesday and Thursday, a story telling

program teaching that legal problems require the services of a lawyer.

The fear of the uncertain expense of consulting a lawyer, the lack of acquaintance with a lawyer and the lawyer's hesitancy in seeking and taking care of small cases, the Association tries to cure with its Lawyers Reference Service. The Service provides for three classes of registrations and serves three principal functions. Laymen generally, including those fully able to pay a fair fee, who seek a lawyer experienced in a particular field are referred to registrants in the first class. Laymen of the lower income groups who seek a lawyer who will serve for a relatively small fee within their means are referred to registrants in the second class. Fellow lawyers seeking the help of experienced specialists in particular fields are referred to registrants in the third class.

The registrations in the second class designed for the benefit of people in the lower income groups, in my opinion, are far the most important. The high and middle income groups generally have no difficulty in agreeing upon and paying a lawyer's fee. The indigent group can take problems to the social service agencies and be referred to the Legal Aid Clinic. The lower income group which can pay a fee but needs protection in the amount of the fee is the group which will avoid lawyers unless a service to meet its needs is provided.

Registrations in the first and third classes of the Lawyers Reference Service have proved profitable. I direct attention to the cards on pages 62 and 67 of the December 1946 issue of the classified telephone directory. Similar cards are to be placed in the newspapers.

Registration in the second class of the Service is a duty but not a burdensome one. The great bulk of class three cases can pay fees which are not inadequate for the services called for. If the lawyers will not take care of the business for which this class is designed, they cannot complain if the business goes to the unauthorized practitioner. If lawyers relax the principle against unauthorized practice for the small cases, they cannot expect to maintain the principle for the larger cases.

Alex W. Davis

ADJUDICATION OR ANARCHY?

By James C. Sheppard, of the Los Angeles Bar

A DEMOCRACY cannot continue to exist unless those elements which comprise it are themselves democratic in character.

For twelve years we have witnessed a tremendous increase in the growth and power of labor organizations. Their power is in excess of their responsibiliy. A policy of dictatorship, rather than the genuine processes of democracy characterizes the public action of these unions. Not more than one or two men determine upon what basis, and whether, the personnel of the maritime unions shall work. Meanwhile, the country's development of a merchant marine is postponed while the British Empire, and the Scandinavian countries feverishly rebuild their own merchant marine to our prejudice. One man determines whether, and upon what terms, coal shall be mined. While that man exercises his dictatorial powers, the wheels of a national industry cease to move. Is this country moving into a situation where the actions of say, five labor dictators, shall determine the welfare of one hundred and forty million people?

It is a necessary function of government to control the excesses of any minority group, when those excesses impinge upon the welfare of the body politic. Despite the sentiment of the general public that excesses should be curbed, neither the politicians, nor the lawmakers, have been active in taking any steps to do anything other than to preserve the status quo.

The internecine warfare now occurring between management and labor is a slugging match, without even the benefit of the Queensbury rules. No holds are barred. Each side is oblivious to the consequences of its acts, as they affect a totally unprotected public. There are myriads of pickets in Hollywood, vehicles are overturned, workers' homes are bombed, employers are helpless, there is neither law nor order, and the public interest suffers. A single man instructs the coal miners not to work, thumbs his nose at the government, and the public interest again suffers. Your guess is as good as that of the next man as to when ships will sail, when the wheels of industry will be stopped, all while labor and management repair to the field to do battle in a struggle which has no ending.

One of the purposes of a system of government of laws is the protection of the public interest. It is a certainty that the public possesses an interest in the orderly adjudication and determination of labor-management disputes, for such have a definite consequence upon the orderly administration of the country's legal peace and the proper functioning of its economic processes. Heretofore, the legislative branches of our state and federal governments have made no tangible progress in establishing the requisite controls and mechanism sufficient to protect the public interest. Obviously, our present methods of solving industrial disputes must be pleasing to even the theoretical anarchists. It is time to invoke the orderly processes of adjudication so that the public interest may be protected,

There are things inherent in this present situation which threaten the very essence of industrial freedom and political liberty. Lawyers, and the organized bar, should propose remedial legislation to solve the problem. There must be legislation designed to protect labor, industry and the public. Tribunals should be established with the power to hear and determine controversies. And there must be power to enforce the award of such tribunals.

"Historians have said that the murder of Cicero marked the end of the Roman Republic. And every would-be despot has found it necessary to silence the tongues of his country's lawyers. For this . . . is our supreme function—to be sleepless as sentinels on the ramparts of human liberty and there to sound the alarm whenever an enemy appears."[1]

Just as it will never be possible to avoid a final global war without an enforceable control by law, so will it be impossible to have an orderly domestic economy until we have an adequate control over industrial disputes under law.

Now is the time for the Bar to study, speak forthrightly, and act accordingly. The very least that we can do is for our own Bar Association to establish a committee for the purpose of studying and proposing appropriate legislation.

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[1]Remarks of John W. Davis before the Association of the Bar of the City of New York, March 16, 1946.

THE COST OF LIVING— IS IT STILL GOING UP?

ALMOST all consumers, including lawyers, are wondering when the cost of living will stop going up. Recent figures issued by the Bureau of Labor Statistics of the United States Department of Labor are illuminating in this respect and indicate that up to October 15, 1946, at least, the C. of L. was still on a steep upward climb. It may be that the peak has been reached and that prices are about ready to level out.

The Consumers' Price Index, as kept by the Bureau of Labor Statistics, is based upon prices of living essentials and is a reflection of retail prices to lower-income city families. The index does not reflect luxury items or commodities and services which would appear only in high income family budgets.

It is interesting to note a comparison of the Consumers' Price Indexes for the major cities on the Pacific Coast, Los Angeles, San Francisco and Seattle, and also to compare these with the national average for large cities. The table showing this comparison is as follows:

COMPARISON OF CONSUMERS' PRICE INDEXES FOR LOS ANGELES, SAN FRANCISCO, SEATTLE AND NATIONAL LARGE CITY AVERAGE.

(As of October 15, 1946.)

(Average prices during 5 pre-war years, 1935-1939 = 100.0)

Index	Los Angeles	San Francisco	Seattle	Aver. all U.S. Large Cities
Consumers' Prices (All items included)	148.2	153.0	151.8	148.4
Food	182.8	191.4	186.1	180.0
Clothing	160.8	160.1	160.8	167.0
Fuel, Electricity and Ice	92.5	82.3	108.8	114.4
House Furnishings	161.3	136.3	167.1	167.6
Miscellaneous	132.4	142.5	138.7	130.8

The above table shows that while the increase in the cost of living in Los Angeles is approximately the same as that of the national average for large cities, it is substantially less than the increases for San Francisco and Seattle. It is also interesting to note that food costs have gone up less in Los Angeles than in either Seattle or San Francisco. However, clothing costs have increased approximately the same for all three of

the Pacific Coast cities, but less than the national average. There appears to be a wide discrepancy in the changes in the costs for fuel, electricity and ice between the California cities, the Pacific Northwest and the average for the nation. In this respect, California consumers are particularly fortunate as this particular index has even gone down from the 1935-1939 average. It would be extremely difficult to find another part of the index which has actually gone down from the pre-war level. The national average reflects, of course, the increased cost for fuel, such as coal, and this is also true in Seattle. On the other hand, hand, the miscellaneouls part of the index which includes services, such as for medical and dental care, transportation, theatre admission, automotive and other repair services, is substantially higher in San Francisco than elsewhere. A sutdy of the above tables clearly shows that the changes in our economy are not uniform throughout the country, or even in large cities in the same state. Locally, residents of metropolitan Los Angeles should feel fortunate that the cost of living index is at least lower than elsewhere on the Pacific Coast and in line with the national average.

Another table which may be interesting shows the monthly changes which have taken place during the year 1946, up to October 15, for the Consumer Price Indexes for metropolitan Los Angeles. The table is as follows:

COMPARISON OF MONTHLY CHANGES (1946) IN CONSUMERS' PRICE INDEXES FOR LOS ANGELES.

(Average prices during 5 pre-war years, 1935-1939 = 100.0)

	All Items	Food	Clothing	Fuel & Ice	House Furnishings	Misc.
Jan. 15	132.7	148.6	145.4	92.5	143.5	129.4
Feb. 15	132.5	148.4	144.7	92.5	144.3	129.3
Mar. 15	133.1	148.9	147.9	92.5	144.3	129.4
Apr. 15	134.4	149.0	149.1	92.5	145.3	129.8
May 15	134.2	150.7	150.4	92.5	146.8	129.8
June 15	136.1	154.8	151.3	92.5	149.1	130.1
July 15	142.3	171.2	153.0	92.5	151.3	130.5
Aug. 15	144.6	175.1	156.2	92.5	152.0	132.2
Sept. 15	145.6	176.5	159.3	92.5	157.4	131.3
Oct. 15	148.2	182.8	160.8	92.5	161.3	132.4

It appears that while there was a small increase during the first five months the substantial increase in consumer prices has occurred from June 15 to October 15.

Changes are also still taking place in the lawyers' office cost of living (overhead). A check with several large real estate firms indicates that the pressure on commercial rents is still upward and will probably continue that way until there is a better relationship of supply to demand. It is reported that responsible and fair-dealing landlords have tried not to increase office rents more than 33 1/3% from pre-war levels; however, in certain districts and in isolated instances increases undoubtedly have been much larger than this. There seems to be no definite figures regarding increases for clerical, stenographic and secretarial services, although these have increased substantially from the pre-war standards. Expenditures for printing and briefs still seem to be going up, principally on account of increased labor costs.

The only note of cheer for those who desire lower, or at least stabilized prices, is the opinion of a number of economists that signs already indicate lower prices next year. Thus, the Dow-Jones Commodity Futures Index turned down several weeks ago; lower contract prices for future deliveries of cotton, wheat, corn and oats may mean more reasonable consumer prices for textiles and foods next spring or summer. While we all would like more concrete evidence, there still may be hope for a lower C. of L.

F. S. B.

WHAT PROTECTION IS TITLE INSURANCE?[1]

By Lawrence L. Otis, of the Los Angels Bar.[2]

THE requirement of a policy of title insurance in virtually all real estate transactions in California suggests the propriety of a study of the protection it affords. The connotation of *title* is: ownership, possession, use—all in relation to land. The *policy* covers the public records *and certain off-record risks.* By *public records* is meant the public records (a) of the District Court of the Federal District, (b) of the County, or (c)

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[1]Basis of an address before the Junior Barristers last May, the Beverly Hills Realty Board in June and the Chancery Club in September.

[2]Member, Los Angeles Bar Ass'n; Associate Counsel, Title Insurance and Trust Company.

of the City, in which the land or any part thereof, title to which is insured, is situated. Such policy insures against loss resulting from the extent of the title, as shown in the policy, not being as represented therein at the date thereof. It protects against valid claims and provides a defense against invalid ones.

The policy has this in common with the abstract, the certificate, the guaranty of title—it covers all matters disclosed by an examination of the public records. The *policy* alone, however, goes *further* to cover, in addition, many *off-record* risks, *i.e.*, defects in title *not* disclosed by examination of such public records. The scope of this coverage of record and off-record risks is detailed in the following paragraphs.

A. PUBLIC RECORDS.

Federal; County; City: in the offices of the Recorder; Registrar; Clerks of the several courts; Clerks of the County and of the City; Assessors, Treasurers, Tax Collectors; and others.

1. To cover these records it is first necessary to *examine, summarize* and *classify* every instrument, entry, action and decree, from the Spanish and Mexican grants to yesterday's filings, so that each can be considered in determining its effect upon the title to the land to which it may relate. In Los Angeles County there are thousands upon thousands of such items (instruments filed for record during 1946, alone, will exceed 800,000) every one of them *posted,* with care and fidelity, to the parcel—or to the person—affected thereby, in the records (*plant*) of the insurer.

2. It is then necessary to *interpret* these instruments—from the simplest deed to the most abstruse trust; whether it was entitled to be recorded, what land it affects, what effect it has on the title—those blanket deeds, omnibus clauses, leases, trusts, reservations to strangers to the title or deed, future interests, references to matters not of record, those missing signatures, faulty acknowledgments, etc., etc.

3. It also is necessary to construe all *judicial proceedings* affecting titles—questions of jurisdiction, scope, validity and effect; proper county, necessary parties, valid service, finality, property correctly described. In a recent probate sale, the inadvertent use of a "5" instead of a "3" in the references to the Range (of Government survey), in the sale proceedings, resulted

in confirmation of the sale of a parcel just six miles removed from that of the decedent. Failure to realize that an unrecorded deed, delivered by the decedent in his lifetime, is superior to the title distributed to his devisee, could involve loss to the insurer of the title of such distributee.

4. All unpaid taxes and special assessments must be covered. The records of these are scattered among no less than 150 tax offices in Los Angeles County. Tax descriptions often vary materially from those shown in records of ownership. Tax deeds are not always issued, not always recorded. Protest and invalidity suits, bond foreclosures and Treasurer's sales may be pending. There may be overlapping assessments or assessments and bonds issued under more than one of the many improvement and bond acts. Except under the yet untested legislation of 1945, the lien of unpaid assessments securing improvement bonds ordinarily continues until paid, even though enforcement is barred by lapse of time. And there is the recently reiterated

principle of *parity* of all tax and special assessment liens, and the titles derived therefrom. (*Monheit v. Cigna,* 28 A. C. 31, 219, 168 P. (2d) 965.)

Incidentally, the hazard of error, generally, in proceedings for the collection and enforcement of taxes—long recognized—prevents the insurance of tax titles. For many years the courts have regarded purchases of tax titles as speculative—buying a lawsuit. They were invalidated upon slight grounds. Recently, the Supreme Court has accorded them greater stability through the broader application of curative statutes, now held to reach all but basic constitutional defects. Yet the latter cannot be catalogued but must be left to the courts to determine, case by case. New Revenue and Taxation Code, section 175, may ultimately be held to reach even these, should our courts give it the sweep accorded in a few states as distinguished from the majority rule that it is just another curative act.

B. OFF-RECORD RISKS.

I. COVERED.
II. NOT COVERED.
III. EXTENDED COVERAGE.

I. COVERED.

(a) *Identity of Parties.* A policy of title insurance affords protection against forgery, false personation and (by the requirement of compliance with code provisions) dealing with title to land by a name other than that in which title was acquired. This is, perhaps, generally known but not widely appreciated. The *Statement of Identity* often required by insurers in Southern California, has proved of great assistance in this phase of protection as well as on questions of status.

(b) *Competency.* The policy insures against loss due to the minority, incompetency, insanity, death or presumed death of any interested person in the chain of title. Psychopathic cases, while not adjudications of incompetency, are danger signals to an insurer and, in such instances, proof of restoration to capacity is required. The problems respecting missing persons have been previously outlined by this writer. Probate proceedings based upon the presumption of death from seven years' absence are sometimes encountered, but cannot be treated as binding should the missing person reappear.

(c) *Status.* The status of each person involved in the chain is of great importance in passing upon titles. This is readily appreciated by lawyers with reference to *marital* status, but it also arises in such cases as: *bankruptcy* (one example: the rule, since 1938, that property inherited by a bankrupt within six months after date of bankruptcy becomes part of the estate in bankruptcy); *ineligible aliens*—except under treaty, no alien ineligible to citizenship can own land (any land, not alone agricultural land) in this State; *blocked nationals*—under Treasury war-time controls (still operative, though now being *defrosted*), enemy nationals and nationals of occupied (*blocked*) countries, as well as persons on the *black-list* may not engage in financial transactions, except under general or special license; *fictitious entities* (including partnerships prior to adoption of the uniform partnership laws) which may not acquire title in the fictitious name, *e.g.,* common law trusts and individuals doing business under fictitious names.

(d) *Powers.* Close attention must always be given to the powers conferred upon agents and fiduciaries under powers of attorney, trusts, etc., and, by law, upon governmental agencies, corporations, partnerships and other associations. An example that recurs with great frequency is the question of the power of an agent, trustee or public body, having power to lease land, to lease for the exploration of oil and gas; or, under trusts, to lease (for any purpose) for a term extending beyond the duration of such trust, unless the declaration of trust specifically so provides. The powers of a domestic or foreign corporation may be incapable of exercise through suspension or forfeiture of charter for non-payment of license taxes, or the like, although this will nowhere appear in said public records.

(e) *Delivery.* The delivery of any instrument affecting the title to land with intent to pass (or charge) the title is, as is well known, essential to effectuate its purpose; yet this fact of delivery is not disclosed by the records. The presumption of delivery from being recorded is rebuttable. A deed executed in blank can only be completed by another under written authority in that regard, which will seldom appear of record. Cross-deeds, their operation conditioned upon the happening of some future event, are ineffective, as are deeds placed in escrow and

delivered in disregard of the conditions thereof. (See 1 *So. Cal. Law Review,* p. 32.)

(f) *Laws.* Statutes, regulations and orders, both federal and state, in increasing numbers and complexity, have a direct and intimate impact upon the title to property and require constant study and attention. Again, it is hardly necessary to mention to lawyers the often completely "off-record" interest of a wife in property standing of record in the husband, one illustration of the operation of community property laws. Consider the many technical rules relating to joint tenancies; to homesteads; to partnerships; just to mention a few. A situation difficult to deal with is the possible lien of federal estate taxes which arises at the instant of death, requires no notice to anyone and is only released by payment or through such arrangements with the Commissioner of Internal Revenue as are sanctioned by the Revenue laws. The title of a good faith purchaser for value, under probate proceedings or otherwise, is, nevertheless, subject to such lien. The list of laws which must be considered in passing on titles could be extended indefinitely; as could the deci-

sions of appellate courts, having the force of law, which must also be studied and noted; as an example, the rule that the enforcement of a deed of trust by Trustee's sale on default will *not* eliminate an admittedly junior lien for federal income taxes (*Met. Life Ins. Co. v. U. S.*, 107 Fed. (2d) 311).

II. OFF-RECORD RISKS NOT COVERED.

The standard policy of title insurance, in general use (the C. L. T. A.—California Land Title Association—form), does *not* insure against:

(a) loss arising from defects or other matters concerning the title *known to the insured* to exist at the date of the policy and not theretofore communicated in writing to the insurer. This hardly needs explanation, since the insurer could not be expected to protect an insured against facts he himself knows and does not disclose.

(b) easements or liens which are not shown by the public records; such as unrecorded utility easements, public or private roads, community driveways; mechanic's liens, whose priority will relate back to the inception of work though recorded after the date of the policy.

(c) rights or claims of persons in possession of the land which are not shown by those public records which impart constructive notice; for example, occupants of the land under an unrecorded lease, or claiming title by adverse possession; rights of a lessee under an unrecorded agreement modifying his recorded lease (see *Basch v. Tide Water Assoc. Oil Co.*, 49 C. A. (2d) 743).

(d) facts, rights, interests or claims which are not shown by those public records which impart constructive notice, but which could be ascertained by an inspection of the land, or by making inquiry of persons in possession thereof, or by a correct survey; for example, shortages or excesses in boundaries, encroachment of improvements, violations of deed restrictions, etc.

(e) mining claims, reservations in patents, water rights, claims or title to water. (The standard policy does not cover these, whether or not of record.)

(f) acts or regulations of any governmental agency regulating the occupancy or use of the land, or any building or structure thereon; *e.g.*, zoning ordinances.

It is apparent that the foregoing items (b), (c) and (d), not covered by the standard policy, can be determined by a careful inspection of the land, or survey, or inquiry of parties in possession. These ordinarily are left up to the insured, who is charged with the information such action would disclose, as fully as though it appeared of record. Mining claims, reservations in patents and water rights are usually not important in connection with urban, subdivided property; and water rights, particularly, depend upon too many elusive factors to make it possible to cover them in the standard policy.

III. Extended Coverage.

Special endorsements can be made, however, or special forms of policy used, by which the insured can be accorded protection against many of these off-record risks not covered by the standard policy. For this available additional coverage, a commensurate extra premium is charged.

(a) *Special Indorsements.* These are furnished in proper cases for such situations as: protection to lenders against priority of mechanic's liens, limited, however, to insurance that the lender's mortgage or deed of trust was recorded prior to the inception of the work of improvement; insurance against forced removal of encroachments upon adjoining land; against loss by reason of an existing violation of private building restrictions (based on laches, waiver, abandonment, changed conditions, etc.); against possible outstanding rights, the assertion of which probably cannot be sustained; ownership of title underlying public easements; etc.

(b) *Full Coverage.* (Lender's): the A. T. A.—American Title Association—form of lender's policy covers the matters referred to in items (b), (c), (d) and (e) of II, *supra,* which are excluded from the protection of the standard policy. This is based upon an adequate survey furnished the insurer which then makes a careful inspection of the land and inquiry of all persons in possession. Whatever rights are disclosed thereby must, however, be shown in the policy as qualifying the title.

The desirability of such added protection was first expressed by eastern lending institutions, not equipped to investigate such matters themselves; but other lenders have been quick to appreciate the value thereof. Some interesting problems have

been encountered in providing this service. For example, there was the instance where a heavy underground telephone cable, completely buried, was overlooked, and subsequent excavating dislodged it; another, where a buried sewer conduit crossed the land to serve adjacent property, installed when both parcels were held in common ownership, and which came under the doctrine of "apparent" easements, because reasonably necessary and continuous as to use, and readily located by a competent plumber! Such inspections often disclose a variety of encroachments, overhanging buildings or architectural details, party-walls, boundary fences, community driveways, faulty surveys, improperly located improvements and the like. As might be expected, the performance of such services by trained and experienced personnel repeatedly brings to light novel and important matters which the average person would not observe or appreciate.

(c) *Full Coverage Policy* (Fee): This is the standard policy first referred to, with items (b), (c), (d) and (e) of II, *supra,* eliminated by special indorsement, and which protects the owner just as the A. T. A. policy protects the lender; involving the same careful survey, inspection and inquiry. Both types of full coverage policy are written primarily on urban and subdivided land rather than on rural property. While unimproved land may be covered, they are more in demand on improved property.

In both the A. T. A. and Full Coverage policies the exception of mining claims, reservations in patents, water rights, claims or title to water is eliminated, thereby insuring against loss arising out of the assertion of such rights. Neither the exception nor its omission has reference, however, to outstanding mineral rights previously granted or reserved by express conveyances, such as the prior grant or reservation of oil and gas, ownership of which, if separated from the general estate in the land, would be excluded from the description of the property covered by the policy rather than shown as an encumbrance or qualification of the title.

The protection of title insurance, the latest development in the science of assuring ownership of land and unique in its coverage of off-record risks, has gained its widest acceptance and achieved its greatest effectiveness in California. It stands on its own merits, strengthened by state supervision, statutory reserves, and conservative management.

CULTIVATING WORLD FRIENDSHIP

By Frank G. Tyrrell, Judge of the Municipal Court

THE 68th Annual Meeting of the American Bar Association at Cincinnati, Ohio, December 17-20, 1945 was addressed by, among others, Captain Harold E. Stassen, U.S.N.R., of St. Paul, Minnesota. In that address, Captain Stassen commended the work of the Section of International and Comparative Law, said of the United Nations Charter, that it is "only a first step", and needs revision, developing and strengthening. Then he said: "I should like to see a committee of the American Bar Association visit the other major countries of the world promptly . . . spend a month in Russia, in exchange for a similar committee of Russian jurists spending a month in this country".

This suggestion was amplified; their work should include "a fresh analysis of the systems of jurisprudence" of the world "to determine the paths by which the various judicial codes might meet in a United Nations code for specific, basic human rights." It should be "a searching, sympathetic, earnest approach to the other nation".

It ought to be safe to assume that this wise suggestion will not simply be applauded by the Association, and then forgotten; that it will provoke both thought and action. If there were no other or higher motive, self-interest moves us to cultivate world friendship, for mutual acquaintance and an understanding sympathy are conditions precedent to a peaceful world. As long as we stand aloof and apart, ignorant of other peoples, there is bound to result a series of suspicions, misunderstandings, rivalries, and strife, engendering war eventually.

The same obligation rests with imperative and compelling force on all other professions and all other groups, and we may rest assured that many of them will respond, as the churches already are doing. It is obviously absurd to stop with devising and setting up a law mechanism for securing and maintaining peace, and then stop, expecting it to work automatically. Any plan of government must be administered.

Captain Stassen pleaded for "continuing study and attention" by "the most eminent lawyers of the land"; well and good, but that alone is not sufficient; this continuing attention and study must be given by every citizen, as far as his personal and private

interests permit, and certainly by every lawyer, whether "eminent" or not. And "there's the rub". The unremitting, hydraulic pressure of the lower wants so absorbs our attention and exhausts our energies that we have little or none left for even a consideration of world welfare.

But it is a "must"; it is mandatory. For if we do not give it, and move steadily forward in making broad and ample the foundations for peaceful relations in our thinking, invoking both reflection and volition, then we shall again be plunged into the horrors of total war, and reap the inevitable results of supineness and neglect,—death, devastation, and probably—not merely possibly—extinction. We pay our money and take our choice.

The Stassen suggestion and its implications set before the legal profession an alluring field of thought and action. The worker is made by his work. In a sense it is probably still true that "God made man", but he is shaped into symmetry and strength of character mainly by his work,—or dwarfed, disfigured, and irretrievably marred. The job of deciding and of winning cases in court sometimes seems wholly sordid; it is measurably relieved by the development and application of great principles of life and conduct. But there is still need for some corrective exercise of one's faculties. Here it is, and on a grand scale. It is nothing less than making one's life bear directly upon human welfare all over the inhabited earth.

The subject of the speaker who followed Captain Stassen is apropos in this connection,—"The Lawyer—Steward of Human Rights." And that is a stewardship which impels the lawyer into this wide field of study and action. It will not do to say, "I haven't the time"; you have all the time there is, and certainly you have time to do whatever is necessary to self-preservation; for it impinges upon and involves that. You will not be permitted to live in a divided, warring world, but only in a world of peace. It has been said with endless iteration, that in a third global war America would be the first nation to be attacked, and under a shower of atomic bombs.

Regard for others and co-operation with them is the law to a great extent, even in the jungle, as Kipling reminds us. "The strength of the pack is the wolf, and the strength of the wolf is the pack." And that law is "as old and as true as the sky." Disregard it, under the fancied compulsion of being absorbed in

earning a livelihood, and you invite demolition and death. You will be living selfishly, and selfishness is not only immoral, it is unscientific. My quarrel with my fellowmen in this particular is not that they are not religious enough, but that they are not scientific enough.

Let this homily close with the closing words of the speaker referred to, who followed Captain Stassen, General John T. Barker of Kansas City, Missouri: "It has been said, 'When war ends, tyranny begins'. It is up to you and me and the lawyers of the world to see that we do not have, in any spot on earth, the tyranny which is so abhorred under the law."

COMMUNITY OIL AND GAS LEASES

By Edmund I. Read, of the Los Angeles Bar

THE subject of Community Oil and Gas Leases is becoming a matter of concern to a large number of people in this State, by reason of the increased activity in town lot drilling. While such contracts have been recognized for a good many years, they have, for the most part, related to rural and undeveloped land of comparatively low value. Drilling in residential and commercial areas is a more recent development, creating new problems, since the land is more valuable, and in most cases improved with buildings. Title questions, therefore, assume a greater importance, and it is to be regretted that so many of the issues involved are, as yet, unsettled by the courts.

With comparatively little authority to guide one, it may seem inopportune to attempt to discuss the legal aspects of the subject at this time. It is thought, however, that a review of some of the elementary principles of the law of Oil and Gas, together with an outline of the more important difficulties, may be helpful in overcoming some of the latent pitfalls. The elementary principles are ever present, but are sometimes lost sight of, even by the courts, by reason of the fact that certain theories applied to individual leases may have very different effects on community leases. This discussion, therefore, will be confined as closely as possible to such points as are pertinent to the Community Lease Contract, which are not covered in the subject of leases in general.

The nature of the lessor's royalty and the effect of zoning ordinances present two major sources of controversy, and for

the sake of clarity these two matters will be treated separately, with the third part of the article relating to other questions involved in the preparation of the lease contract.

I.
THE NATURE OF THE LESSOR'S ROYALTY.

It is held by the weight of authority that the right to take the oil and gas from the land of another is a profit *a prendre* in gross. Distinguished from a profit appurtenant, it is an individual right, independent of dominant estate and therefore alienable, standing alone. If granted for a fixed period it is an estate for years, or a chattel real, but if for a fixed period and so long thereafter as oil and gas is produced from the subject land in paying quantities, it approaches the dignity of a freehold. The usual method of creating the estate is by means of an instrument commonly known as an oil and gas lease. Unfortunately, the term lease is apt to be a misnomer, since the majority of these agreements run for a fixed period and so long thereafter as oil and gas is produced, etc. Hence, such an instrument is actually a grant of an incorporeal hereditament

upon limitation and condition subsequent. On the other hand, the royalty reserved by the land owner is not a profit, but is in the nature of rent, which would ordinarily pass to a grantee under a deed to the land made subsequent to the lease as an incident to the fee, along with the reversion and right of re-entry under the lease. (*Callahan v. Martin,* 3 Cal. (2d) 110, 43 P. (2d) 788.)

This conception, however, when applied to a community lease, was rudely shattered by the decision in *Tanner v. Title Insurance and Trust Company,* 20 Cal. (2d) 814, 129 P. (2d) 383. In this case, the several owners of nine parcels of land entered into a Community Lease to one of the major Oil Companies. The company drilled two wells on parcels designated as Nos. 1 and 2, respectively, and then quitclaimed the remaining seven parcels to their respective owners. Under the Pooling Agreement in the lease, however, the owners of the original nine parcels continued to share pro-rata in the royalties from all the wells under the lease wherever located, irrespective of any partial quitclaim by the lessee.

Thus, assuming the parcels to be equal in area, the owners of parcels 1 and 2 received only two-ninths of the royalties although the wells were located on their land, and the owners of the remaining seven parcels shared in the seven-ninths royalties, in spite of the profit having been subsequently extinguished and their land freed from the burden by the quitclaim. In the meantime, the owner of parcel 3 executed a Deed of Trust to his land to secure payment of a loan made by the beneficiary. This instrument was made subsequent to the recording of the lease, but at the same time an agreement was given by the trustor and the oil company, whereby the Oil Lease was subordinated to the Trust Deed. Upon default in payment of the loan, parcel No. 3 was sold through foreclosure by the trustee, and the persons claiming under the purchaser at the sale sued to recover the one-ninth royalty interest in the wells producing on parcels 1 and 2. Judgment for plaintiff was reversed by the Supreme Court, which held that while the interest of a lessor of a community lease in the royalties accruing from production from such lessor's land was rent, and therefore an incident to the fee, the right to receive royalties from the oil

produced from the land of his co-lessors was an incorporeal hereditament in gross, and would not pass to a grantee by a conveyance of the land unless specifically granted.

By reason of its somewhat startling effect on land titles this case deserves further study. Under the ruling adopted one can imagine a no inconsiderable number of conveyances subject to attack. Lessees, for example, who have been relying on ordinary deeds to recognize the transfer of the interest of a community lessor, may discover themselves in the position of having to pay royalties to parties claiming under the grantor, after having paid them to the grantee. Moreover, purchasers at foreclosure sales may find that the right to take the oil from the land had been severed, but that nothing is to be had in return. In addition, the validity of many specific devises of real property could be questioned, since the devisee would receive only the real estate, and the oil royalties would become a part of the residue unless they were specifically included in the devise.

For these reasons it may be interesting to analyze the decision in detail. In the first place, the Court appears to have

construed the pooling agreement between the co-lessors to operate as a reciprocal assignment of fractional interests in the oil produced on the land of each individual lessor. Under this reasoning, it was held that the interest assigned by the individual lessor to his co-lessors was in incorporeal hereditament in gross, analogous to the right in the assignee to receive future rents, which was therefore separate and distinct from the right of such assignee to receive a percentage of the oil produced on the assignee's own land. The latter interest, being appurtenant, would naturally follow in a conveyance of the land, unless specifically reserved, whereas, the former interest, being in gross, would not.

Some exception may be taken to this construction, as it could be argued that the pooling agreement was not an exchange of fractional interests, but merely provided a method of dividing the consideration paid by the lessee. Under this theory each lessor would be entitled to a fixed percentage of the proceeds of the oil produced from any part of the land included in the lease, in consideration of his giving the lessee the right to take the oil from his own land. The fact that the oil is produced from the land of co-lessors, A and B, would confer no rights in favor of A and B other than those in favor of the owners of the remaining parcels. Hence, A and B would have nothing to assign to the other lessors.

On the other hand, the owners of the non-producing parcels would receive their percentages of the proceeds by virtue of the ownership of their land at the time of making the lease. It could therefore be assumed that such return from the lessee was a direct issue from such owners' land, rather than from an incorporeal interest in the land of someone else. This may well have been the situation prior to the quitclaim of the seven parcels. While this point was not discussed in the opinion, it is conceivable that the case could have been decided the other way, had the lessee retained all of the land originally leased.

It could be therefore concluded under this theory that the interest of each lessor, being a direct issue from the land of such lessor would be conveyed by a deed without reservation.

The effect of the agreement subordinating the lease to the deed of trust remains to be considered. While this was mentioned in the recital of facts in the Tanner opinion, it appar-

ently had no bearing on the decision, since, under the hereditament in gross theory, it would make no difference whether the Deed of Trust was ahead of the lease or behind it. An unusual situation, however, was developed by the foreclosure. If the well were on the trustor's land, the purchaser could undoubtedly maintain ejectment against the lessee. Since it was located elsewhere, there was no one to eject. On the other hand, the right to take the oil, which had been granted by the trustor to the lessee, would seem to be cut off by the foreclosure and become merged in the fee. Yet, under the Tanner decision, the trustor, having been ousted by a paramount title, from possession of the land, which had been the basis of his participation in the lease in the first place, was still entitled to receive royalties. This would seem to be in direct conflict with the express or implied warranty of title by the lessor.

II.

THE EFFECT OF ZONING ORDINANCES.

Zoning ordinances present some interesting problems in connection with Community Leases. In the majority of municipalities zone variances are usually required in residential or commercial areas to permit drilling for oil and gas. The granting of such application is generally conditioned upon the inclusion of the rights of owners of so-called isolated lots to participate in the lease. Thus, assuming that the minimum area required is one acre, or for example, seven contiguous lots, the variance is designed to protect the lot owner, who is unable or unwilling to join in the lease at the outset, from being deprived of the right to a return, when he is so isolated as to be unable to join in another lease. The original lessor may therefore find that instead of receiving one-seventh of the royalty, as contemplated, he may be cut down to a considerably smaller fraction by the inclusion of additional lots. The lessee usually endeavors to protect himself in this respect by inserting a provision in the lease, which designates a certain specified area that may be included, and that anyone owning land in such specified area may become a lessor thereto, and thereby, at the date of becoming a lessor, participate in the benefits of and be subject to the conditions of the lease. Such a provision would ordinarily be simple enough to apply, if it were not for the fact that it is often in direct conflict with the pooling agreement.

A typical pooling agreement clause reads as follows: "The lessors hereto pool the oil and gas rights appurtenant to and forming a part of their respective properties for the period of this lease, and irrespective of any Quitclaim by the lessee hereunder of a part of the demised premises *at the time of the discovery of oil or gas* shall thereafter share pro-rata in a one-sixth royalty on all oil and gas thereafter produced from any of the properties forming a part of this lease, *at the time of such first discovery of oil and/or gas.*" Assuming then, that a lessee accepts a lease executed by the owners of lots "1 to 7," inclusive, in Tract "A" and later obtains a paying well, it would appear that the proportionate share of each of the lessors in and to the one-sixth royalty was established at the time of the discovery. The Zone variance ordinance, however, directs the setting aside of the proportionate sum of royalties which would accrue to the owners of lots 8 to 13, inclusive, had such lots been included in the lease, by reason of such lots having been isolated. The lessee contends that he is obligated to pay a total one-sixth royalty only, and that in order to comply with the ordinance he is entitled to set aside six-thirteenths of such one-sixth royalty for the benefit of the owners of lots 8 to 13, inclusive, who have not yet signed the lease. He attempts to justify his contention by pointing to the description of the community area which reads "Lots 1 to 13, inclusive, of Tract 'A'" and the provision thereafter whereby it is agreed that any owner of land included in this area may become a lessor at any time and participate in the benefits, etc. The lessors may, of course, reply: (A) That their respective rights to share in the one-sixth royalty had become fixed at the time of the discovery and cannot be diminished later. (B) That the contract was accepted by the lessee subject to the inherent police power of the municipality, and that it is the duty of the lessee to comply with a valid exercise thereof. (C) That it is lessee's obligation to pay the proportionate royalty to the isolated lot owners, since the ordinance imposed no burden on the lessors to share their percentages with anyone else. (D) That any ambiguity in the lease must be strictly construed against the lessee, who created it. Unfortunately, these are voices crying in the wilderness, for as yet there is no substantial authority on the subject. The alert lessee will specifically provide for these contingencies.

In a number of instances in the City of Los Angeles the zone variance ordinances have contained mandatory provisions that the lessee shall pay the owners of isolated lots their proportionate share of the royalties unconditionally and irrespective of whether or not they sign the lease. These provisions may be subject to judicial scrutiny on constitutional grounds, by reason of their possible conflict with the due process and impairing the obligation of contract clauses, and the question of being arbitrary and discriminatory, although exercised under the police power. Since the theory of ownership of oil in place has been abandoned by the weight of authority in this State (*Callahan v. Martin, supra*), it follows that the land owner cannot object if the oil under his land is drained by an adjacent well. Theoretically he can protect himself only by drilling on his own land, but this is impractical if he merely owns a city lot, because of zoning restrictions which limit drilling to one well per acre. If such land owner, however, has been given the opportunity to join in a community lease, and neglects or refuses to do so, it may be thought to be somewhat over-zealous paternalism on the part of the city fathers to compel such land owner's participation in the proceeds of a well on his neighbor's land, without assuming any of the obligations of the lease, and with no contractual relationship with either the lessors or lessee, whatsoever. The lessee, for example, might have the burden of proving the title to the land in such owner each time a royalty payment was due, or run the risk of making a double payment, in the event of a transfer without notice. It would be interesting also to ascertain the nature of such land owner's interest. Would it be a profit in gross, profit appurtenant, or rent? If a profit in gross, he could convey the property, and leave the royalties to his great grandchildren. If a rent, it could be reserved in a deed to the land and then descend or be assigned to others. On the other hand, it would seem to be somewhat of an oddity, to say the least, to have a profit appurtenant created and attached to one's land, through the benevolence of the sovereign's minions, at the expense of someone else.

III.
SUGGESTIONS IN PREPARATION OF LEASES.

Many difficulties can, of course, be eliminated by careful preparation of the lease contract. For example, the granting

clause, which is generally designed to allow the lessee considerable latitude in his operations, often does not confer the right to the lessee to grant easements for pipe lines to a third party for a transport of oil or gas other than that produced on the leased premises. Since pipe lines, as a rule, benefit the entire district, it seems desirable to specify such easements in order to eliminate the tedious task involved in procuring individual easements from the respective land owners. On the other hand, the right to maintain gasoline extraction plants, which is contained in most leases, may prove to be a severe detriment to the lessors in residential areas.

The distinction between a lease for farm land and one covering city lots should be emphasized, since the majority of printed form leases relate to the former, and the broad powers granted to the lessee may interfere considerably with the owner's use of their city property. For this reason, it may be well to provide for the release of surface rights to the lessors whose land is not to be occupied. Also, a suitable provision for additional compensation to the owner of the land on which the well and permanent equipment is located would seem to be in order, since there would be little value remaining in such land.

The matter of computing the lessors' percentages in the royalty has met with some difficulty in connection with the land in abutting streets and highways. For example, a lease of seven lots, roughly comprising one acre calculated by the total area embraced within the actual lot lines, may total considerably more than an acre when the area is extended to the center of such streets and highways. In the majority of cases the lessors own the fee to such land, subject to the public easement, but the zoning restrictions may limit the number of drill sites to one to an acre, which is computed by taking the area within the lot lines only. Hence, in a one-acre lease, the lessee may obtain as much as one and one-half acres from which to drain the oil. However, the practice of computing the lessors' percentages by the inclusion of such street land has met with opposition from the inside lot owners, since the corner lot owners by having the area in two streets obtain a proportionately higher percentage. This difficulty may ordinarily be overcome by an express provision in the lease, but occasionally situations arise wherein a

street is widened, so as to take, for example, forty feet from a corner lot fifty feet wide. The record title to this lot according to the filed map is unchanged by the condemnation except for the easement, but under the two methods of computing the royalty the lessor of this lot may find, in one instance, that his royalty is based on his owning fifty feet plus the distance to the center of the street, amounting to perhaps thirty feet, or a total of eighty feet, and under the other method he may be deemed to have only ten feet. Even though the lease expressly provides for a division according to the land owned within the actual lot lines only, there would still remain the question as to whether he would be entitled to fifty feet, or ten.

Consideration should be given to the matter of notice of default. The requirement that such notices must be given by all of the lessors may result in hardship, and a simple majority should suffice. A provision that the lessors owning a majority of the area may select an agent for this purpose would also appear to be in order.

In many cases, the lessee may own the land on which the well is located either directly or through a dummy. To declare a forfeiture in this event might prove to be a Pyrrhic victory to the lessors, since it would be difficulty to compel abandonment of the well in the absence of express language covering this point.

Assignments and other forms of alienation of the leasehold interest present another source of controversy. The lessor is, of course, concerned with the responsibility of the parties obligated to fulfill the covenants of the lease, and also with the effect of possible clouds on his title by conveyances of fractional interests, whereas the lessee should have a comparatively free hand to dispose of his interest to enable proper financing of the venture. One method has been worked out whereby the assignment of any so-called units or percents contains a provision that a termination of the lease automatically extinguishes any rights to the land acquired thereunder, without notice to the holder. It is understood that such a provision, properly drawn, has met with the approval of the Corporation Commissioner.

Bankruptcy of the lessee has unfortunate results, not only to the lessee, but to the lessor as well. Since the trustee is an officer of the court, the lessor's remedies are limited in case of default. In case of disagreement among the creditors, long periods of delay may ensue, involving deterioration of the wells through lack of proper maintenance. Conditions for forfeiture in the event of bankruptcy are difficult to enforce, but a proper limitation in the grant is suggested as being the strongest means of minimizing the effect, especially in cases where the lessee owns the land on which the well and equipment are located.

Provisions for payment of royalties to banks or trust companies for account of the lessors are quite common. This enables the lessee to discharge his obligation by making a single payment of each royalty when due, and eliminates the considerable bookkeeping and records involved. It is also an advantage to the lessor to have his interest administered by a capable trustee, particularly in facilitating transfers and loan transactions. Sometimes a question arises as to who is responsible for the bank's charges, but the general custom is that the lessors bear the expense.

The effect of subordination agreements has been discussed previously, but it may be mentioned that a suitable provision relating to such agreements is desirable in the lease. Many lending institutions will refuse to make a loan on property encumbered by a community lease unless the lease is subordinated to the deed of trust. The lessee will not ordinarily object to such a clause, provided the trust deed does not cover the land on which the derrick, tanks or other permanent equipment are located. Since the Title companies will not pass a subordination agreement unless it is consented to by the lessors, the subordination clause in the lease should expressly relate to trust deeds or mortgages which may be executed subsequent to the lease, and provide that no further consent by the lessors shall be required.

Partial quitclaims have been referred to in the discussion of the Tanner case. It would seem equitable for all the parties concerned to insert a proviso that in the event of a partial surrender of any of the leased land, the owners thereof shall continue to participate in the proceeds of the existing production for such period only as the quitclaimed land shall remain unleased, and that all rights of the owners of such quitclaimed land shall immediately terminate upon the execution of an independent lease to such land. Care should also be given to the preparation for the final termination of the lease. It would seem desirable to expressly provide that no interest in the land is conveyed by the respective lessors to each other and, that upon the final surrender by the lessee, any and all rights of such lessors, as against the other, shall be automatically extinguished. This should eliminate the requirement of separate quitclaims from the lessors to each other, and free the land from potential clouds

on the title by reason of possible rights of entry surviving the termination.

It is hoped that these comments, while speculative in the main, have touched on the more important phases of the subject. Community oil leases are unique in the law, but, like many oddities, are sometimes unjustifiably frowned upon. They present many problems, but it is believed that the majority of these contracts, when properly drawn, have resulted in profitable ventures to both lessor and lessee.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACTS OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933

of Los Angeles Bar Bulletin, published monthly at Los Angeles, California, for December 1, 1946.

State of California, County of Los Angeles.—ss.

Before me, a Notary Public in and for the state and county aforesaid, personally appeared Robert M. Parker, who, having been duly sworn according to law, deposes and says that he is the business manager of the Los Angeles Bar Bulletin, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—Los Angeles Bar Association, 1124 Rowan Bldg., Los Angeles 13, Calif.

Editor—Frank S. Balthis, Jr., 640 Rowan Bldg., Los Angeles 13, California.

Managing Editor—None.

Business Manager—Robert M. Parker, 241 E. 4th St., Los Angeles 13, California.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.) Alex W. Davis, President, 514 Pacific Mutual Bldg., Los Angeles 14, California. Walter L. Nossaman, Secretary, 631 Title Insurance Bldg., Los Angeles 13, California. Ewell D. Moore, Treasurer, 620 Subway Terminal Bldg., Los Angeles 13, California. Los Angeles Bar Association, 1124 Rowan Bldg., Los Angeles 13, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the twelve months preceeding the date shown above is..... (This information is required from daily publications only.)

ROBERT M. PARKER,
Business Manager.

Sworn to and subscribed before me this 1st day of December, 1946.

[Seal]

MARGUERITE F. CRIPPS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires January 3, 1948.

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